

under title 18, United States Code, or imprisoned not more than 5 years, or both.

**§ 500.702 Prepenalty notice; contents; respondent's rights; service.**

(a) *When required.* If the Director of the Office of Foreign Assets Control has reasonable cause to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, direction or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the Trading with the Enemy Act, and the Director determines that further proceedings are warranted, he or she shall issue to the person concerned a notice of his or her intent to impose a monetary penalty and/or forfeiture. The prepenalty notice may be issued whether or not another agency has taken any action with respect to this matter.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall describe the violation, specify the laws and regulations allegedly violated, and state the amount of the proposed monetary penalty and/or forfeiture.

(2) *Respondent's rights*—(i) *Right to respond.* The prepenalty notice shall also inform the respondent of respondent's right to respond in writing to the notice within 30 calendar days of the mailing or other service of the notice pursuant to paragraph (c) of this section, as to why a monetary penalty and/or forfeiture should not be imposed, or, if imposed, why it should be in a lesser amount than proposed.

(ii) *Right to request a hearing.* The prepenalty notice shall also inform the respondent that, in the response provided for in paragraph (b)(2)(i) of this section, the respondent may also request a hearing conducted pursuant to 5 U.S.C. 554–557 to present the respondent's defenses to the imposition of a penalty and/or forfeiture and to offer any other information that the respondent believes should be included in the agency record prior to a final determination concerning the imposition of a penalty and/or forfeiture. A failure to request a hearing within 30 calendar

days of service of the prepenalty notice constitutes a waiver of a hearing.

(iii) *Right to request discovery prior to hearing.* The prepenalty notice shall also inform the respondent of the right to discovery prior to a requested hearing. Discovery must be requested in writing in the response provided for in paragraph (b)(2)(i) of this section, jointly with respondent's request for a hearing. A failure to file a request for discovery within 30 calendar days of service of the prepenalty notice constitutes a waiver of prehearing discovery.

(c) *Service.* The prepenalty notice, or any amendment or supplement thereto, shall be served upon the respondent. Service shall be presumed completed:

(1) Upon mailing a copy by registered or certified mail, return receipt requested, addressed to the respondent at the respondent's last known address; or

(2) Upon the mailing date stated in a date-stamped postal receipt presented by the Office of Foreign Assets Control with respect to any respondent who has refused, avoided, or in any way attempted to decline delivery, tender, or acceptance of the registered or certified letter or has refused to recover a registered or certified letter served; or

(3) Upon personal service by leaving a copy with the respondent or an officer, a managing or general agent, or any other agent authorized by appointment or by law to accept or receive service for the respondent and evidenced by a certificate of service signed and dated by the individual making such service, stating the method of service and the identity of the individual with whom the prepenalty notice was left; or

(4) Upon proof of service on a respondent who is not resident in the United States by any method of service permitted by the law of the jurisdiction in which the respondent resides or is located, provided the requirements of such foreign law satisfy due process requirements under United States law with respect to notice of administrative proceedings, and where applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraphs (c)(1) through (3) of this section inappropriate or ineffective for service upon the nonresident respondent.